IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5069 of 1993

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VRAJLAL AMRABHAI MEHTA

Versus

GUJARAT HOUSING BOARD & ANOTHER

Appearance:

1. Special Civil Application No. 5069 of 1993

MR KETAN A DAVE for the Petitioner

MR JM BAROT for MR HS MUNSHAW for Respondent Nos.1-2

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 07/12/2004

ORAL JUDGEMENT

The petitioner, then an Assistant Estate Manager

in the Gujarat Housing Board, the respondent herein (hereinafter referred to as "the Board"), challenges the order dated 19th April, 1993. By impugned order the petitioner was ordered to be reduced in rank for one year and allotment of tenement in 31 MIG Self-Finance Project, Rajkot was ordered to be cancelled.

In the year 1983 the Board framed a housing scheme at Rajkot for its employees in middle income group. By Circular dated 1st September, 1983 the Board invited applications for allotment of tenements in the said scheme from its employees. One of the conditions of eligibility required that the total annual income of the employee, husband/wife and minor children, for the year ending on 31st August, 1983 should be more than Rs.7,200=00 and upto Rs.18,000=00. Pursuant to the said circular the petitioner made application for allotment of a tenement in the said scheme. In the said application the total annual income was shown to be Rs.17,000=00. The said application was accompanied by a salary statement indicating the annual salary income of the petitioner to be Rs.18,588=70. After deducting the house rent the said income came to Rs.17,413=90. In support of the said application the petitioner made affidavit on 11th March, 1985. In the said affidavit he showed his annual income to be Rs.17,413=90, as reflected in the above mentioned salary statement. On the basis of the said application and the accompanying affidavit the petitioner was allotted a tenement in the said middle income group housing scheme at Rajkot. Since then, a complaint was received that the petitioner had made encroachment on the land of the Board by adding a room and a toilet to the said tenement. In the ensuing enquiry it was discovered that the petitioner had made a false statement in his application for allotment of a tenement and in the supporting affidavit. It was found that the annual salary income of the petitioner for the year ending on 31st August, 1983 was more than Rs.19,000=00. Thus, the petitioner was found to be ineligible for allotment of a tenement in the said housing scheme and was guilty of making false statement on oath.

A disciplinary proceeding was, therefore, initiated against the petitioner. The charge-sheet was issued on 10th December, 1991. The said charge-sheet was replied by the petitioner. A disciplinary enquiry was conducted. The petitioner was found guilty as alleged. Consequently, by impugned order the petitioner was visited with punishment of reduction in rank to a lower post for one year and the allotment of the tenement in

the aforesaid housing scheme was ordered to be cancelled.

Learned advocate Mr.Dave has appeared for the petitioner. He has submitted that the petitioner was justified in showing his income to be Rs.17,000=00. As reflected in the salary statement, after deducting the house rent, the petitioner's total salary came to Rs.17,413=90. He has also relied upon the Minutes of the Meeting of the Allotment Committee held on 25th December, 1983. He has submitted that the Committee, in the said Meeting, for the first time, determined which of the income should be computed and which should be excluded from such computation. He has submitted that if such exclusion is taken into consideration the petitioner would still be within the required income group i.e. his total income would be less than Rs.18,000=00. The petitioner would, therefore, be eligible for allotment of quarter. He has also submitted that the petitioner cannot be said to have mislead the Allotment Committee. No punishment, therefore, ought to have been imposed upon the petitioner.

I see no substance in the contentions raised by Mr.Dave. As it is disclosed from the record, the application made by the petitioner and the accompanying salary statement were not countersigned by the superior officer i.e. the Estate Officer. The reply to the said charge-sheet submitted by the petitioner on 17th January, 1992 only supports the allegation that the petitioner did deliberately make false statement about his income. In the said reply the petitioner tried to justify the false statement made by him but there was no denial that the petitioner's total salary income during the relevant year was more than Rs.19,000=00 as alleged. There is no gainsaying that the petitioner did make false statement in his application as well as in affidavit made by him with a view to misleading the Allotment Committee and thus received undue advantage. Except the justification tried to be made out by the petitioner there is no other challenge to the enquiry proceeding or the punishment of reduction in rank imposed upon the petitioner. As the guilt against the petitioner was proved, the order of punishment of reduction in rank for one year does not call for interference.

Pending this petition the petitioner's possession of the said tenement was protected by ad-interim order made by this Court (Coram: Y.B.Bhatt, J.) and later confirmed by Hon'ble Mr.Justice H.L.Gokhale.

As to the allotment of a tenement in the said

middle income group housing scheme, Mr.Dave has informed that the above referred encroachment made by the petitioner has since been regularised. He has also submitted that the tenement allotted to the petitioner has been fully paid-up by the petitioner.

In view of the passage of time and the fact that the petitioner has paid-up the price of the said tenement in his occupation and that the illegal construction made by the petitioner has been regularised by the Board, I am of the opinion that the allotment of the said tenement to the petitioner is required to be protected. The Board is, therefore, directed to regularise the allotment of the tenement in the said housing scheme made to the petitioner by imposing appropriate penalty. Such exercise shall be done within three months from today. The order of penalty made by the Board pursuant to this order shall be final and binding to the petitioner. The same shall not give a fresh cause of action to the petitioner.

The Board has also brought on the record of the matter the fact that in subject matter of this petition the petitioner had approached the civil court also. As the said fact has been disclosed by the Board in its affidavit dated 26th March, 2004, the petitioner has now made affidavit and has submitted that the said suit has been dismissed for non-prosecution. It appears that on 27th April, 1993 the petitioner had approached the learned Civil Judge (S.D.), Bhavnagar by instituting Regular Civil Suit No.238/1993. In the said suit the petitioner had challenged the validity of the impugned order dated 19th April, 1993 and had prayed for stay of the implementation of the said order. Though this petition was preferred thereafter on 21st May, 1993 the factum of the petitioner's instituting the civil suit had not been disclosed in the petition until the said fact was disclosed by the Board in its affidavit dated 26th March, 2004. The petitioner having invoked the jurisdiction of the civil court a petition under Article 226 of the Constitution of India would not be maintainable. Filing of such petition amounts to abuse of process of law. By not disclosing the fact that the petitioner had instituted a civil suit the petitioner is guilty of suppressio veri. Thus, the petitioner not only made a false statement in his application and in affidavit made on oath; he went further to make encroachment on the Board's land and had audacity to suppress the material facts from this Court. The petition, therefore, deserves to be dismissed with cost.

In view of the above discussion, subject to the direction issued, the petition is dismissed with cost. Rule is discharged. The cost is quantified at Rs.15,000=00.

(Ms. R.M.Doshit, J.)

/sakkaf